HJ ALI OMAR & ANOR

v.

LIM KIAN LEE & ORS

HIGH COURT MALAYA, JOHOR BAHRU
SYED AHMAD HELMY JC
[CIVIL SUIT NO: 22-328-1997]
20 APRIL 2001

CIVIL PROCEDURE: *Locus standi - Action by beneficiaries of estate - Letters of administration - Whether must have letters of administration before having the right to sue - Beneficiaries not claiming for proprietary right over land - Whether not to be denied locus*

The plaintiffs, the beneficiaries of the deceased's estate, had applied for declarations that the transfer of the deceased's property to the defendants was null and void and for a re-transfer of the property to the deceased's name. The plaintiffs however had not extracted letters of administration in respect of the estate, and that being so, a question arose as to whether the plaintiffs had the necessary *locus* to bring and maintain their suit. It was the defendants' stand that without the requisite letters of administration the plaintiffs clearly had no capacity to sue.

Held:

[1] The Federal Court decision of *Ooi Jim & Anor v Ai Eit & Ors* clearly established that there were exceptions to the rule that letters of administration is a pre-requisite for *locus.* It was also evident that the court, in laying the exceptions, did not curtail the principle established to declarations of status only. (p 446 g-h)

[2] The exception laid out in *Ooi Jim*'s case must extend to a situation where a beneficiary who has not taken out letters of administration may be seised with *locus* to protect and preserve the landed property of the deceased which is being intermeddled by third parties, as to deny him *locus* would tantamount to depriving him of the relief to prevent damage to the deceased's property which may be irreparable. (p 447 a)

[3] Just as the obtaining of the grant of probate is to prove title but does not affect the capacity, as capacity is derived from the will, similarly the non-obtaining of grant of letters of administration does not affect a beneficiary's rights for preservation of the property of the deceased. His rights of preservation cannot be equated with his rights over an interest or share in

the property of the deceased. And thus, so long as his action is formulated on the basis of preservation, as is the case here, the fact that he is not armed with letters of administration does not deprive him of the capacity. (p 447 b-c)

[Plaintiffs legally competent to sue.]

Case(s) referred to:
Chetty v. Chetty [1916] AC 603 ***(refd)***
Govindasamy Pillai & Sons v. Lok Seng Chai & Ors [1961] 27 MLJ 89 ***(refd)***
Ingall v. Moran [1944] 1 KB 160 ***(refd)***
Ooi Jim & Anor v. Ai Eit & Ors [1977] 2 MLJ 105 ***(refd)***
SMKR Meyappa Chetty v. SN Supramaniam Chetty [1916] AC 603 ***(refd)***

For the plaintiffs - Abdul Razak Ahmad; M/s Abdul Razak Ahmad & Assoc
For the 1st & 2nd defendants - Sila Dass; M/s Sila Dass & Partners
For the 3rd defendant - Steven Thiru; M/s Shook Lin & Bok

Reported by WA Sharif

JUDGMENT

Syed Ahmad Helmy JC:

The issue which the parties herein have agreed to submit for the court's determination is whether the plaintiffs herein have the requisite *locus standi* to initiate and maintain the claim as formulated in the action herein.

The action herein is at the stage of the commencement of the cross-examination of the plaintiffs' evidence wherein the parties agreed that the issue of *locus standi* be resolved prior to the cross-examination being proceeded upon.

The objection against the *locus standi* of the plaintiffs' is founded on the failure to obtain letters of administration by the plaintiffs to be clothed with the authority to initiate the action.

It is the defendants' contention that without the requisite letters of administration the plaintiffs do not have the authority or legal capacity to bring and maintain the action.

Before delving into the respective contentions of counsels for the parties herein it is pertinent to note that the principal relief claimed herein by the plaintiffs is for a declaration that the transfers in favour of the 1st and 2nd defendants be declared invalid and void and the land in question be transferred back into the names of the original owners, namely Banjar binti Tahir and Mansor bin Marjumi (both deceased)

Coming back to the issue at hand it is the defendants' contention that from the evidence as adduced through the 1st plaintiffs' examination-in-chief and the documents tendered namely the Kathis's certificate dated 4 April 1997 there is no indication to remotely suggest that the plaintiffs have authority or legal capacity to bring and maintain this action. The Kathi's certificate relates only to the certification of the entitlement of shares of the beneficiaries and it does not confer on the plaintiffs a right or title to administer the deceased's estate nor invest them with the authority to bring and maintain the action.

The defendants relied on the settled principle that authority over estate property is only conferred upon extraction of the grant of letters of administration – *Chetty v. Chetty* [1916] AC 603 and *Govindasamy Pillai & Sons v. Lok Seng Chai & Ors* [1961] 27 MLJ 89.

In *P. Govindasamy Pillai & Sons v. Lok Seng Chai* – the issue for determination was whether a person who has obtained an order for grant of letters of administration to issue can be sued in a representative capacity before the grant is extracted by him for the purpose of enabling the liability of an intestate estate to be determined and paid out of the assets of the deceased.

The cause of action therein was for damages for breach of contract and/or duty as a common carrier and/or negligence in and about the carriage of goods by the deceased plaintiff and the personal representatives of the estate set up the defence that they have not been constituted the legal representatives of the deceased and hence cannot be sued in that capacity.

The court held that it is only upon extraction of the grant of letters of administration that confers status. The court adopted the English Court of Appeal decision in *Ingall v. Moran* [1944] 1 KB 160 which had followed the Privy Council decision of *S.M.K.R. Meyappa Chetty v. SN Supramaniam Chetty* [1916] AC 603 wherein Lord Parker of Waddington stated at p. 608:

> It is quite clear that an executor derives his title and authority from the will of his testator and not from any grant of probate. The personal property of the testator including all rights of action, vests in him upon the testator's death, and the consequence is that he can institute an action in the character of executor before he proves the will. He cannot, it is true, obtain a decree before probate, but it is not because his title depends on probate, but because the production of probate is the only way in which by the rules of the court, he is allowed to prove his title. An administrator, on the other hand, derives title solely under his grant, and cannot therefore, institute an action as administrator before he gets his grant. The law on the point is well settled.

From the above decision it becomes clear that proof of title is different from capacity. In testacy situation the obtaining of the grant only relates to the proving of title and does not affect the capacity. However in an intestate situation can it be said that the absence of grant of letters of administration would deprive the beneficiary of capacity in all situations?

The plaintiffs herein have through their counsel conceded that the plaintiffs have not applied for nor been granted letters of administration. However they maintain that their status as beneficiaries by reason of the Kathi's certificate is established and is not in dispute. It is the plaintiffs' contention that by reason of the formulation of the claim as appears in para. 12 of the statement of claim they are not claiming any proprietary rights over the property in question – they are merely asking the court to declare that the property should be registered in the original owner's name (since deceased) should the court find that the transfer is not valid. The plaintiffs' contention is that so long as the claim is not formulated to claim a share, the plaintiffs herein have the requisite capacity to maintain the action and relies on the Federal Court decision of *Ooi Jim & Anor v. Ai Eit & Ors.* [1977] 2 MLJ 105.

In *Ooi Jim*'s case the Federal Court held that in an application for declaration of status there is no necessity for letters of administration to be taken out prior to the bringing of the action.

The plaintiff in that action applied for a declaration that her husband was the lawful adopted son of the deceased who died intestate and that she was a beneficiary of the estate of the deceased. His Lordship Gill CJ at p. 105 para G to H stated:

> In our judgment it was not necessary for the first plaintiff to take out such letters of administration in order to bring this action which was primarily an action for a declaration as to the status of her husband. Declaratory proceedings are often the most convenient and sometimes the only possible mode of determining status. The question of taking out letters of administration would only arise when it became necessary for the first plaintiff to claim her share in the estate of the said intestate.

From the aforesaid decision we can discern that there are exceptions to the rule that letters of administration is a pre-requisite for *locus*. The Federal Court decision clearly establishes the proposition that letters of administration is not a pre-requisite to confer *locus* in certain situations.

The decision of the Federal Court in laying down exceptions does not curtail the principle established to declaration of status only – surely that cannot be the intent as the law is never one to close its doors on justice.

The exception in my view would extend to a situation where a beneficiary who has not taken out letters of administration may be seised with *locus* to protect and preserve the landed property of the deceased which is being intermeddled by third parties as to deny him *locus* would tantamount to deprive him of relief or recourse to prevent damage to the deceased's property which may be irreparable.

The rationale as I see it is just as the obtaining of the grant of probate is to prove title but does not affect the capacity (as capacity is derived from the will) similarly the non-obtaining of a grant of letters of administration does not affect a beneficiary's rights for preservation of the property of the deceased. His rights of preservation cannot be equated to his rights over an interest or share in the property of the deceased – so long as his action is formulated on the basis of preservation (as is in this case) the fact that he is not armed with letters of administration does not deprive him of the capacity.

In essence it is another instance of exception to the rule that a beneficiary must be possessed with letters of administration before having the right to sue.

Turning to the factual matrix herein the position of the plaintiffs as beneficiaries (which is not denied by the defendants) coupled with the formulation of their claim to preserve the property provides them with a cause of action and consequently the requisite legal capacity or *locus standi.*

As I have stated earlier as beneficiaries the plaintiffs may well be entitled to a share or interest in the property forming part of the assets of deceased estate but the question to be determined at this juncture is whether they are claiming an interest over the assets of the deceased estate in the action herein. From the prayers sought it would appear that the plaintiffs as beneficiary is applying for the transfer in favour of the defendant to be declared void for reason of forgery etc, and against the 3rd defendant for negligence in effecting the transfer to the 1st and 2nd defendants. Upon the declaration as such they seek that the property be re-transferred to the names of the original owners namely the deceased and not themselves. In short they are seeking declaratory reliefs for preservation of the property – they are not claiming any interest or share as such in the present suit.

Accordingly it is my considered view that by seeking the declaration as such the plaintiffs herein cannot be said to be claiming an interest or share on the estate for which they must be seised with letters of administration to be conferred with the requisite *locus standi.*